

RECEIVED
CENTRAL FAX CENTER

JUL 15 2005

Appl. No. 09/656,805
Amdt. Dated July 15, 2005
Reply to Office action of April 15, 2005

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

Appl. No. : 09/656,805
Applicant : Richard Niccolai
Filed : September 7, 2000
Title : METHOD FOR MANUFACTURING HEARING AIDS, AND A
HEARING AID

TC/A.U. : 2643
Examiner : Phylesha Larvinia Dabney

Docket No. : 32955
Customer No. : 000116

Mail Stop RCE
Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

AMENDMENT E

Sir:

This amendment is filed in response to the final Office action dated April 15, 2005. The three-month period for responding to the Office action expires on July 15, 2005. A Request for Continued Examination (RCE) is being submitted herewith.

Amendments to the Claims begin on page 2 of this paper.

Remarks/Arguments begin on page 5 of this paper.

07/18/2005 TL0111 00000034 160820 09656805
02-FC:1253 1020.00-DA

I hereby certify that this correspondence is being facsimile transmitted to the United States Postal Service at 571-273-8300 on the date indicated below.

Una L. Lawricia		July 15, 2005
Name of Attorney for Applicant(s)	Signature of Attorney	Date

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

PATENT MAINTENANCE
DIVISION

Appl. No. : 09/656,805
Applicant : Richard Niccolai
Filed : September 7, 2000
TC/A.U. : 3646
Examiner : Phylesha Larvinia Dabney

2005 SEP 27 PM 4:34

US PATENT & TRADEMARK
OFFICE

Title : METHOD FOR MANUFACTURING HEARING AIDS, AND
A HEARING AID

Customer No. : 000,116
Docket No. : 32955

Commissioner of Patents
P.O. Box 1450
Alexandria, VA 22313-1450
Attn: Refund Section, Accounting Division
Office of Finance

REFUND REQUEST

Dear Sir:

Applicant respectfully requests a refund in the amount of \$1,020.00.

A Final Rejection was mailed to applicant on January 12, 2005 (see enclosed copy marked as Exhibit "A"), which applicant responded to on March 24, 2005 (see enclosed copy marked as Exhibit "B"). A second Final Rejection was mailed to applicant on April 15, 2005 (see enclosed copy marked as Exhibit "C"), which states, "Applicant's request to vacate the previous office action mailed 12 January 2005 is granted." Applicant responded to the April 15, 2005 Final Rejection on July 15, 2005 with an amendment and a RCE (see enclosed copy marked as Exhibit "D"). On July 18, 2005, the RCE fee was withdrawn from the deposit account. However, on the same day, \$1,020.00 was also withdrawn from the deposit account for a three month extension of time (see enclosed copy of the July 2005 deposit account marked as Exhibit "E").

I hereby certify that this correspondence is being deposited with the United States Postal Service as first class mail in an envelope addressed to: Commissioner for Patents, P.O. Box 1450, Alexandria, VA. 22313-1450, Attn. Refund Section, Accounting Division, Office of Finance, on the date indicated below.

Michael W. Garvey
Name of Attorney

Signature of Attorney

09/23/2005
Date

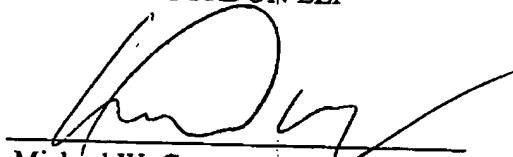
BEST AVAILABLE COPY

As shown above, both Final Rejections have been responded to in a timely fashion. Further, the Final Rejection of January 15, 2005 has been vacated. Therefore, the three month extension of time was not required. Applicant respectfully requests a refund for the withdrawn three month extension of time fee (\$1,020.00).

Please credit our Deposit Account No. 16-0820, Order No. 32955.

Respectfully submitted,

PEARNE & GORDON LLP



Michael W. Garvey, Reg. No. 35878

1801 East 9th Street
Suite 1200
Cleveland, Ohio 44114-3108

216-579-1700

September 23, 2005

BEST AVAILABLE COPY



UNITED STATES PATENT AND TRADEMARK OFFICE

UNITED STATES DEPARTMENT OF COMMERCE
United States Patent and Trademark Office
Address: COMMISSIONER FOR PATENTS
P.O. Box 1450
Alexandria, Virginia 22313-1450
www.uspto.gov

APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/656,805	09/07/2000	Richard Niccolai	32955	1855

116 7590 01/12/2005

PEARNE & GORDON LLP
1801 EAST 9TH STREET
SUITE 1200
CLEVELAND, OH 44114-3108

EXAMINER

DABNEY, PHYLESHA LARVINIA

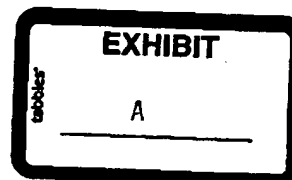
ART UNIT PAPER NUMBER

2643

DATE MAILED: 01/12/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

BEST AVAILABLE COPY



Office Action Summary

Application No.

09/656,805

Applicant(s)

NICCOLAI, RICHARD

Examiner

Phylesha L Dabney

Art Unit

2643

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 8/19/04.
- 2a) ☒ This action is FINAL. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-52 is/are pending in the application.
- 4a) Of the above claim(s) 1-37 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☐ Claim(s) 38-52 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 11/3/04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

This action is in response to the amendment received on 19 August 2004 in which claims 38-52 are pending, and claims 1-37 were cancelled. Applicant's arguments with respect to claims have been considered but are moot in view of the new ground(s) of rejection.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 38-52 are rejected under 35 U.S.C. 103(a) as being unpatentable over Aebi et al (U.S. Patent No. 5,530,763).

Regarding claims 38 and 49-50, Aebi teaches a hearing aid comprising forming a first part of a first material; joining the first and second part by injection molding the second part of a second material, thereby assembling the first and second parts together (2 using PTFE material, col. 3 lines 26-31; 3-5 using "a suitable plastic" vinyl polysiloxane, col. 4 lines 7 through col. 5 line 26; and filler compound). Aebi does not specifically teach how the first part of the hearing aid is made. However, the examiner takes official notice that it is known in the art to form a material of PTFE by injection molding and to use a two-stage injection molding process to combine the injection molded materials to limiting thermal heat and radiation produced by the electronics within the hearing aid, and thus improve insulation of the worn hearing aids. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention

REST AVAILABLE COPY

Art Unit: 2643

was made to form and join two injection molded materials for improving the insulation of the hearing aid.

Regarding claim 39, Aebi teaches one of the parts is a portion of the housing (3, col. 4 line 66 through col. 5 line 5).

Regarding claims 40, Aebi teaches at least one of the parts is a seal (3 is the enclosing (seal) top portion of the hearing aid, col. 4 line 66 through col. 5 line 5).

Regarding claim 41, see the rejection of claims 39 and 40.

Regarding claim 42, Aebi teaches one of the first and second part is an acoustic conductor (4, 42).

Regarding claim 43, Aebi teaches one of the parts (4) is an acoustic conductor (42) situated at the output of an electromechanical transducer (41) of the hearing aid.

Regarding claim 44, Aebi teaches one of the parts (3) is an acoustic conductor (32) situated at the input of an electromechanical transducer (31) of the hearing aid.

Regarding claim 45, Aebi teaches a resilient bush configured to seat (2) a transducer.

Regarding claims 46-47, Aebi teaches injection molding a third part (2 using PTFE material, col. 3 lines 26-31; 3-5 using "a suitable plastic" vinyl polysiloxane, col. 4 lines 7 through col. 5 line 26; and filler compound) integrally with the first and second parts, thereby assembling the first, second and third parts together, and further comprising a housing, seating bush and an acoustical conductor as depicted in Figure 1.

Regarding claim 48, Aebi teaches a rim portion of a feed-through aperture (34) of the housing (3-5).

BEST AVAILABLE COPY

Regarding claim 51, Aebi teaches mounting a unit (6, 33) of the hearing aid device into an opening of a bordering area, the bordering area being formed by the first and second parts.

Regarding claim 52, Aebi does not specifically teach the unit (6, 33) is a manually operable control element. However, the examiner takes official notice that it is known to include manually operable control elements, such as a rotary control means, etc., on the hearing aid for beneficially allowing the adjustment of the volume. Therefore, it would have been obvious to one of ordinary skill in the art at the time the invention was made to include manual control means in the invention of Aebi for allowing the adjustment of volume, hearing environment selection, and/or etcetera.

Response to Arguments

With respect to the applicant's "Multi component injection molding" article, there isn't a Form PTO-1449 listing this item.

With respect to the applicant's arguments in view of the submitted "Multi component injection molding" article that the Aebi reference does not teach multi-component injection molding. The examiner disagrees. The Aebi reference teaches three materials, the outer covering (2), the injection molded skeleton (3-5), and the injection molded filler (col. 4 line 66 through col. 5 line 5). Of these 3 materials, the reference teaches that the skeleton is injection molded (col. 5 lines 23-26) and the two-component filler is injected into the skeleton via cartridges (col. 4 line 66 through col. 5 line 5). The examiner has further supported above that the covering, e.g. PTFE, can be formed of injection molded material and injection molding is known in the art. In addition, the applicant's submitted article teaches the first component reaches a perform state,

BEST AVAILABLE COPY

Art Unit: 2643

i.e. semi/solid state similar to the skeleton of Aebi, prior to the second material, such as the filler of Aebi, being injected into the first material. In light of this, the examiner contends that the Aebi reference supports the claimed language.

Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Phylesha L Dabney whose telephone number is 703-306-5415. The examiner can normally be reached on Mondays, Tuesdays, Wednesdays, Fridays 8:30-4 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Curtis Kuntz can be reached on 703-305-4708. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

BEST AVAILABLE COPY

Application/Control Number: 09/656,805

Page 6

Art Unit: 2643

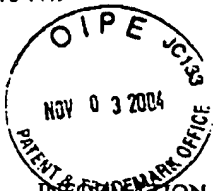
Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

December 27, 2004

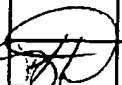
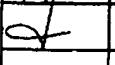
PLD



CURTIS KUNTZ
SUPERVISORY PATENT EXAMINER
TECHNOLOGY CENTER 2600

RECEIVED AVAILABLE COPY

Form PTO-1449	U.S. DEPARTMENT OF COMMERCE PATENT AND TRADEMARK OFFICE	ATTY. DOCKET NO. 32955	SERIAL NO. 09/656,805
 <p>INFORMATION DISCLOSURE CITATION BY APPLICANT</p>		APPLICANT: Richard Niccolai	
		FILING DATE: September 7, 2000	GROUP ART UNIT: 2643

U.S. PATENT DOCUMENTS							
Examiner Initial		Document No.	Date	Name	Class	Subclass	Filing Date if Appropriate
	A						
	B						
	C						
	D						
	E						
	F						
	G						
	H						
	I						
	J						
	K						

FOREIGN PATENT DOCUMENTS							
		Document No.	Date	Country	Class	Subclass	Translation
	L	0 821 542 A2	1/1998	EP			cited in ESR
	M	0 821 543 A2	1/1998	EP			cited in ESR
	N						
	P						

OTHER REFERENCES (Including Author, Title, Date, Pertinent Pages, Etc.)		
	R	
	S	
	T	
Examiner: 	Date Considered 12/28/04	
<p>*Examiner: Initial if reference considered, regardless of whether citation is in conformance with MPEP 609; Draw line through citation if not in conformance and not considered. Include copy of this form with next communication to applicant.</p>		

REQUEST AVAILABLE COPY